

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. ____:____-CV-____ (____)

UNITED STATES OF AMERICA

Plaintiff,

v.

WEYERHAEUSER COMPANY,

Defendant.

COMPLAINT

Fed R. Civ. P. 3

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (hereafter "EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and recovery of costs under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. The United States seeks injunctive relief in order to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at or near a former chlorine plant ("Operable Unit 3") at the Weyerhaeuser Company Plymouth Wood Treating Plant Superfund Site in Martin County, North Carolina (hereinafter referred to as the "Site"). The United States also seeks recovery of certain

unreimbursed costs that have been incurred for response activities undertaken at the Site and a declaratory judgment of liability for costs that will be incurred for response activities at Operable Unit 3 at the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the Defendant, pursuant to Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District under Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

DEFENDANT

4. Defendant Weyerhaeuser Company (“Weyerhaeuser”) is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Weyerhaeuser is the “owner” and “operator” of the Site within the meaning of Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(1).

GENERAL ALLEGATIONS

6. The Site contains an active wood and paper products manufacturing facility owned and operated by Weyerhaeuser.

7. The Site encompasses approximately 2,400 acres in Martin County, North Carolina, approximately 1.5 miles west of the town of Plymouth and seven miles upstream from Albemarle Sound, in a low-lying area near the Roanoke River, which flows into Albemarle Sound.

8. The Site consists of four operable units (OUs): (1) a former landfill located on the northwest portion of the Site adjacent to Highland Prong, and the soils, groundwater and surface

water impacted by this landfill (OU 1); (2) the lower Roanoke River (OU 2); (3) a former mercury cell chlorine plant and soils, sediments, and groundwater impacted by the plant (OU 3); and (4) the sediments and surface waters in Welch Creek and the wetlands associated with Welch Creek (OU 4).

9. Pursuant to a March 24, 1998 Administrative Order on Consent (AOC), Weyerhaeuser conducted a Remedial Investigation (RI) and Feasibility Study (FS) for OU 1, OU 3 and OU 4.

10. Weyerhaeuser completed the RI/FS report for Operable Unit 3 on June 24, 2003.

11. Operable Unit 3 -- the former mercury cell chlorine plant and the soils, sediments, and groundwater impacted by it -- occupies approximately three acres of the Site.

12. Concentrations of mercury are located in the soils of Operable Unit 3 to a depth of 45 feet. Approximately 7,500 pounds of mercury are present in the soil. The groundwater of Operable Unit 3 contains mercury above the levels allowed by the State of North Carolina.

13. Mercury is a "hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14. The decision by EPA on the remedial action to be implemented for Operable Unit 3 is embodied in a final Record of Decision ("ROD"), executed on September 29, 2003.

15. The ROD provides for a remedy which includes installation of a vertical barrier around the footprint of the chlorine plant building, excavations of contaminated soil outside of the enclosure, and groundwater monitoring.

16. The ROD is consistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

17. There have been "releases," or a threatened "release," of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), into the environment at and

from the Site, including from Operable Unit 3.

18. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Operable Unit 3 is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. Since June 24, 2003, EPA has incurred costs of removal and remedial actions, within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25), not inconsistent with the National Contingency Plan, to respond to the release or threatened release of hazardous substances at and from Operable Unit 3.

21. EPA will continue to incur costs of removal and remedial actions, within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25), to respond to the release or threatened release of hazardous substances at and from Operable Unit 3.

FIRST CLAIM FOR RELIEF

22. Paragraphs 1 - 21 are realleged and incorporated herein by reference.

23. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

24. By Executive Order 12580 of January 23, 1987, the President’s functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

25. EPA has determined that there is or may be an imminent and substantial endangerment to

the public health or welfare or the environment because of actual or threatened releases of hazardous substances from Operable Unit 3.

26. Weyerhaeuser is liable for the injunctive relief at Operable Unit 3 to which the United States is entitled under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

SECOND CLAIM FOR RELIEF

27. Paragraphs 1-26 are realleged and incorporated herein by reference.

28. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) provides, in pertinent part: "(1) the owner and operator of a vessel or a facility . . . shall be liable for -- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan."

29. Defendant is jointly and severally liable to the United States for all costs of removal and remedial actions not inconsistent with the National Contingency Plan, incurred after June 24, 2003 by the United States to respond to the release or threatened release of hazardous substances at and from Operable Unit 3, plus accrued interest on the costs.

30. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in pertinent part that in any action for recovery of costs: "the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

31. Defendant is jointly and severally liable to the United States for all costs of removal and remedial actions not inconsistent with the National Contingency Plan to be incurred by the United States in the future to respond to the release or threatened release of hazardous substances at and from Operable Unit 3, plus accrued interest on the costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order Defendant Weyerhaeuser to abate the threat posed by the release or threatened release of hazardous substances at and from Operable Unit 3 by performing the remedy selected by EPA in the ROD.
2. Award the United States a judgment against Defendant Weyerhaeuser for all costs of removal and remedial actions not inconsistent with the National Contingency Plan, incurred after June 24, 2003 by the United States to respond to the release or threatened release of hazardous substances at and from Operable Unit 3, plus any accrued interest on the costs.
3. Award the United States a declaratory judgment that Defendant Weyerhaeuser is liable for all response costs not inconsistent with the National Contingency Plan to be incurred by the United States in connection with Operable Unit 3 in the future.

This _____ day of May, 2004.

Respectfully submitted,

Date _____

W. BENJAMIN FISHEROW
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Date 5/5/04

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